IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Court's order whether the case is or not approved for reporting

(Chapter VIII, Rule 32(2) (b)

Description of Case

Criminal Misc. Application No. 438 of 2006

Date of decision:- 20/06/2006

~~**A.F.R. (Approved for Reporting)**~~

Not approved for reporting

Initials of Judge

Date :- 20/6/2006

Note:- Bench Reader will attach this at the top of the first page of the judgment when it is put up before the Judge for signature.

HIGH COURT OF UTTARANCHAL, AT NAINITAL

Criminal Misc. Application No.438 of 2006

1. Darban Singh S/o Pan Singh
2. Prem Singh S/o Her Singh
3. Khusal Singh S/o Darban Singh
4. Bahadur Singh S/o Sri Bale Singh
   All R/o village Liti
   Patwari Area Liti, Tehsil Kapkot
   District Bageshwar .....Applicants

Versus

1. State of Uttaranchal
2. Lacham Singh S/o Umed Singh
   R/o village Liti Patwari Area Liti
   Tehsil Kapkot
   District Bageshwar ...Respondents

Dated :- 20th June, 2006

Sri B.S. Adhikari learned counsel for the applicants.
Sri Amit Bhatt learned AGA assisted by Sri Rajeev Mohan.

Hon'ble J. C. S. Rawat, J.

1. The petition under section 482 Cr.P.C. has been filed for quashing the criminal proceedings of criminal case No.04/2006 Lacham Singh Vs. Darban Singh & others pending before the Judicial Magistrate, Bageshwar.

2. Brief facts of the case are that the respondent no.2 has filed a complaint to the S.D.M. on 21.12.2005 against the applicants with the allegations that the applicants assaulted him and when the witnesses reached at the spot the applicants-accused made their escape good. The complainant was medically examined in the hospital. The said complaint was registered by the Patwari concerned under section 323, 504, 506 IPC. The respondent no.2 also filed a complaint before the Magistrate against the applicants under section 307, 504, 506 IPC. The learned Magistrate recorded the statements under section 200 & 202 Cr.P.C. and

thereafter he summoned the applicants vide order dated 31.03.2006. Feeling aggrieved by the order of Magistrate, the applicants have come up before this Court.

3. It was contended on behalf of the applicants that the applicants had filed a complaint against the complainant and one other person on 4.1.2006 before the S.D.M. alleging therein that the incident took place on 20.12.2005 at about 12 o'clock and the complainant party assaulted the applicants. Thereafter, on 23.1.2006 the applicant also filed a complaint before the Magistrate against the complainant party. On the complaint of the applicants, the Magistrate has taken cognizance on 14.02.2006 under sections 352, 506 IPC against the respondent no.2 and one another. Perusal of the record reveals that both the parties have admitted in their complaints that the incident took place on 20.12.2005. Now, I have to see who was aggressor on the date of the incident and whether it was a free scuffle or it was a self-defence. Both the parties have filed their complaints with regard to the single incident which took place on 20.12.2005. It cannot be held that the present complaint is frivolous and false. Perusal of the record reveals that the complainant has adduced the evidence of two witnesses in support of his complaint and the evidence shows that there is prima facie case against the applicants. Both the parties are at liberty to make their submissions before the court below at the time of trial which they had taken before this Court. Perusal of the complaint as well as evidence adduced in support of the complaint prima facie discloses the offence. This Court has a limited jurisdiction under section 482 Cr.P.C. This court cannot evaluate the disputed facts of the case. This Court cannot decide as

to whether the evidence is reliable or not. It has been held by the Hon'ble Apex Court in **M. Naraynadas Vs. State of Karnataka 2004 Cri.L.J. p/822** that the power of quashing a criminal proceeding should be exercised very sparingly and with circumspection and that too in the rarest of rare cases; that the court will not be justified in embarking upon an enquiry as to the reliability or genuineness or otherwise of the allegations made in the FIR or the complaint and that the extraordinary or inherent powers do not confer an arbitrary jurisdiction on the Court to act according to its whim or caprise. It has also been held in **State of Karnataka Vs. M. Devendrappa & another 2002(2) SBR p/151** that while exercising jurisdiction under section 482 Cr.P.C., the High Court would not ordinarily embark upon an enquiry whether the evidence in question is reliable or not or whether on a reasonable appreciation of it accusation would not be sustained. That is function of the trial court.

4. It is not permissible for the High Court to look into materials, the acceptability of which is essentially a matter of trial. While exercising jurisdiction under section 482 Cr.P.C., it is not possible for this Court to act as if it is a trial court. **{State of M.P. Vs. Awadh Kishore Gupta and others SCC (Cri) 2004 p/353}.**

5. In view of the above, the petition lacks merit and is dismissed. All the pending miscellaneous application(s) in this case, if any, shall stand disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 20.06.2006

LSR